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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Interested Members of the Public

From: Samantha Horn Olsen, Planning Manager
Marcia Spencer-Famous, Sr. Planner

Date: May 14, 2013

Re: **Public Comment Opportunity Until June 3, 2013** – LUPC Certification
Criteria for Projects Requiring DEP Site Permits

LD 1798, which is now Public Law 2011, Chapter 682, became effective on August 30, 2012. Among other things, PL 2011, Ch. 682 provides that the Department of Environmental Protection (DEP) is the primary permitting agency for all projects located in the unorganized and deorganized areas of Maine that trigger the requirement for a Site Location of Development Law (Site Law) permit. This includes all grid-scale wind energy development, whether within the expedited permitting area or not. Projects reviewed by the DEP under the Site Law also would be reviewed by the DEP under the Natural Resources Protection Act (NRPA) if the proposed development would affect the resources triggering NRPA.

The DEP may only issue permits for a development that is an allowed use in the subdistrict(s) in which it is proposed. All rezoning and any rulemaking to expand the expedited permitting area for wind energy development would continue to be handled by the Land Use Planning Commission (LUPC).

In addition, the LUPC administers some land use standards for which there is no comparable standard in Site Law or NRPA. The law requires that the DEP, prior to issuing a permit, obtain a certification from the LUPC that a project meets those land use standards not considered in the DEP's review. The relevant statutory language is included at the end of this memo.

The LUPC, in consultation with the staff of the DEP, has drafted a table (attached) which details the land use standards applicable to LUPC certification of Site Law projects. The table is intended to be informative for staff, applicants, and the public when engaging in a Site Law project. At this time, the Commission is seeking public comment on the contents of the table. The public may comment on whether the correct standards have been identified, and whether any adjustments to the table are needed.

Any comments or questions should be directed to: Marcia Spencer-Famous, Senior Planner, Marcia.Spencer-Famous@maine.gov, 207-287-4933, 22 State House Station, Augusta, ME 04333-0022.
All Comments, to be fully considered, must be received by June 3, 2013.

Statutory Excerpts

Title 12 §682. DEFINITIONS

20. Planned subdistrict. "Planned subdistrict" means a delineated area for which a specific land use plan and standards have been agreed to by the owner of the land within the delineated area and approved by the commission.

Title 12 §685-B. DEVELOPMENT REVIEW AND APPROVAL

B-1. Except for projects that are located in a planned subdistrict that was approved or accepted by the commission for processing prior to September 1, 2012, a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the commission that is not considered in the department's review under Title 38, section 489-A-1, subsection 1 before issuing a permit. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph;

Title 38 §488. APPLICABILITY (This is in the Site Law Article of Title 38)

9-A. Development within unorganized areas. Except for development described in paragraphs A, B and C, development located within the unorganized and deorganized areas, as defined in Title 12, section 682, subsection 1, is subject to review by the department for compliance with this article. The department shall review development within the unorganized and deorganized areas in accordance with section 489-A-1.

A. A community-based offshore wind energy project, as defined in Title 12, section 682, subsection 19, is reviewed under Title 12, section 685-B, subsection 2-C and is exempt from the requirements of this article.

B. Except for grid-scale wind energy development, development within a planned subdistrict as defined in Title 12, section 682, subsection 20 and approved or accepted for processing prior to September 1, 2012 is reviewed by the commission and is exempt from the requirements of this article.

C. An amendment or revision to a development approved by the Maine Land Use Regulation Commission prior to September 1, 2012 is exempt from review under this article unless the proposed revision by itself is a development of state or regional significance that may substantially affect the environment.

Subdivision plans approved and orders issued by the department under this article must be recorded in the registry of deeds in the county in which the development is located within 90 days.

Violation and enforcement provisions in chapter 2, subchapter 1 apply to development reviewed by the department under this subsection.

Title 38 §489-A-1. DEPARTMENT REVIEW OF DEVELOPMENT WITHIN THE UNORGANIZED AND DEORGANIZED AREAS

1. Review. Except as provided in section 488, subsection 9-A, paragraphs A, B and C, the department shall review development within the unorganized and deorganized areas as defined in Title 12, section 682, subsection 1.

2. Criteria for approval. The department shall approve a development proposal under this section if:

A. The proposed development is an allowed use within the subdistrict or subdistricts in which it is to be located. Subdistricts and allowed uses are established in rule by the Maine Land Use Planning Commission in accordance with

Title 12, section 685-A;

B. The standards established under section 484 are met;

C. The standards established in rules adopted under section 489-E to implement this section are met; and

D. The Maine Land Use Planning Commission has certified that the proposed development meets any land use standard established by the commission and applicable to the project that is not considered in the department's review under subsection 1.

For a development or part of a development within the unorganized or deorganized areas as defined in Title 12, section 682, subsection 1, the department may request and obtain technical assistance and recommendations from the Maine Land Use Planning Commission. The commission shall respond to the requests within 90 days. The department shall consider the recommendations of the commission in acting upon a development application.

Violation and enforcement provisions in chapter 2, subchapter 1 apply to development reviewed by the department under this section.



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Draft for Public Comment - Site Law Certification, Land Use Standards

The tables below list the LUPC's land use standards contained in statute and rule and identify which of these standards the LUPC will apply in its certification review of Site Law projects and which standards effectively will be considered by the DEP in its Site Law permit review.

Statutory Criteria for Approval – Also in LUPC rule at section 10.24

Section of Law	LUPC	DEP	Notes
Section A			
Technical and financial capacity		DEP	
Solid waste and sewage disposal		DEP	
Odor		DEP	
Water supply		DEP	
Section B			
Traffic and transportation arteries	LUPC		
Section C			
No undue adverse effect on existing uses, scenic character, and natural and historic resources		DEP	
Section D			
Soil suitability, sewage disposal		DEP	
Section E			
Conformance with statute, regulations, standards and plans	LUPC		This is accomplished through the application of the statute and rules, and using the CLUP to inform that application, as described in the CLUP guidance document.
Section F			
Subdivision approval	LUPC	DEP	Both agencies have a role – detailed below.
Closing Paragraph			
Public health, safety and general welfare	LUPC		This is broad authority for the commission to protect the public, but in the certification context would primarily apply to the adequacy of fire, police and ambulance services.

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LUPC Rules, Chapters 10 and 13 Land Use Standards

Section of Rule	LUPC Standard	DEP has Standard	Notes
10.11 Nonconforming Uses and Structures	LUPC		
10.25A – Structures Adjacent to Lakes			
Natural and cultural resource values as specified in the Wildlands Lake Assessment		DEP	The natural and cultural resources specified in the Wildlands Lake Assessment also are included in the DEP review criteria.
Water quality		DEP	
Traditional uses		DEP	This may be addressed within the broader Site Law review criteria of harmonious fit and impacts on existing uses.
Regional diversity		DEP	This may be addressed within the broader Site Law review criteria of harmonious fit and impacts on existing uses.
Natural character		DEP	
Lake management goals		DEP	Lake management goals, which are furthered by the classification system, are reflected in the Chapter 10 provisions specific to each subdistrict that address which uses are allowed, including at what density, around lakes within the various management classes. The LUPC's zoning (<i>i.e.</i> , subdistrict designations) also reflect lake management classifications. Through its zoning (including review of rezoning petitions) and application of its subdistrict-specific land use standards the Commission, as part of its important planning role, will promote the management goals of a lake's classification

Section of Rule	LUPC Standard	DEP has Standard	Notes
			as part of its certification review, but will not separately apply Section 10.25(A)(6), which is tied to the Commission's statutory authority to evaluate whether a proposed development fits harmoniously into the existing natural environment. The DEP, under its similar statutory authority, will evaluate whether a proposed development fits harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, or other natural resources. The Commission's lake information will be available to the DEP should the DEP find it informative in conducting its review.
Landowner equity	LUPC	DEP	LUPC – limits on density of development. DEP – phosphorus.
10.25B Prospectively Zoned Areas			
Dimensional standards	LUPC		See 10.26.
Vegetative buffering		DEP	This is related to visual buffering of development – DEP will apply more general standard.
Building layout	LUPC		
10.25C Technical and Financial Capacity		DEP	See Chapter 4 rulemaking (included as part of January 2013 LUPC agenda materials; available on the LUPC website)
10.25D Vehicular Circulation, Access and Parking (except runoff – 10.25(D)(3)(b))	LUPC		10.25(D)(3)(b) will be covered under several sections of DEP's standards.
10.25E Scenic Character, Natural and Historic Features		DEP	
10.25F Noise and Lighting			
Noise		DEP	
Lighting	LUPC		
10.25G Soil Suitability		DEP	
10.25H Solid Waste Disposal		DEP	
10.25I Subsurface Waste Water Disposal		DEP	

Section of Rule	LUPC Standard	DEP has Standard	Notes
10.25J Water Supply		DEP	
10.25K Surface Water Quality		DEP	
10.25L Phosphorus Control		DEP	
10.25M Erosion and Sedimentation Control		DEP	
10.25N Groundwater Quality		DEP	
10.25O Air Quality		DEP	
10.25P Wetland Alterations		DEP	
10.25Q Subdivision and Lot Creation			
Counting parcels	LUPC	DEP	LUPC standards are related to the legal definition of subdivision in the UT; the DEP's standards relate to triggering Site Law. These are different and both are necessary.
Level 2 subdivision (no rezoning)	LUPC		
Layout and design	LUPC		
Spaghetti lots	LUPC		
Subdivision redistricting (open space)	LUPC		
Certificates of compliance	LUPC		LUPC will issue COCs for only the Commission-related standards. Commission staff will report possible DEP standard problems to DEP.
Filing plats		DEP	LUPC will draft form of condition for DEP review, DEP will impose condition.
Recording of large lot land divisions	LUPC		
10.25R Cluster Development	LUPC		
10.25S Open Space	LUPC		
10.25T Activities in Flood Prone Areas	LUPC		LUPC will work with DEP early because flood standards also impact issues such as fill and foundations.
10.25 U Affordable Housing	LUPC		LUPC, but DEP will make wastewater determination.
10.26A-G Dimensional Requirements	LUPC		Consists of lot size, frontage, setbacks, lot coverage, height, exceptions.
10.27A Agricultural Management Activities	LUPC	DEP	DEP only if in conjunction with a development activity.
10.27B Vegetation Clearing	LUPC	DEP	DEP will apply clearing standards in NRPA resource areas; LUPC will apply clearing standards in other areas.

Section of Rule	LUPC Standard	DEP has Standard	Notes
			and the two agencies will coordinate review.
10.27C Mineral Exploration and Extraction	LUPC		These activities generally do not trigger Site Law. Metallic mineral mining is excluded from the definition of Mineral Extraction and is handled in chapter 13.
10.27D Roads and Water Crossings		DEP	Except that MFS may also regulates in some areas.
10.27E Timber Harvesting	LUPC		LUPC, but only in development zones – MFS responsible in Management and Protection zones.
10.27F Filling and Grading		DEP	These address natural resource impacts and visual impacts – DEP will evaluate these in a site-specific way for Site Law projects.
10.27G Motorized Recreational Gold Prospecting	LUPC		
10.27H Driveways Associated with Residential Structures and Uses			
Setbacks, frontage	LUPC	DEP	LUPC For individually permitted residences. DEP (for other than individually permitted dwellings – e.g., condo complex).
Roadway entry	LUPC	DEP	LUPC For individually permitted residences. DEP (for other than individually permitted dwellings – e.g., condo complex).
Water crossings, wetlands, erosion, fill		DEP	
10.27I Pesticide Application	LUPC		This is a non-issue because the Commission's only requirement is that the application be in conformance with applicable State and Federal statutes and regulations.
10.27J Signs	LUPC		
10.27K Water Impoundments		DEP	
10.27L Trailered Ramps, Hand-Carry Launches, and Water-access Ways			
One dock and one access way per subdivision	LUPC		
Maintenance		DEP	
Dimensional requirements (frontage)	LUPC		

Section of Rule	LUPC Standard	DEP has Standard	Notes
Design and construction standards	LUPC	DEP	LUPC only reviews dimensional requirements e.g., width.
10.27M Service Drops	LUPC		This is a non-issue because if the project receives a permit or is exempt from a permit, the service drop is allowed.
10.27N Home Occupations	LUPC		Unlikely to be part of a Site Law project.
10.27O Permanent Docking Structures			
Reconstruction – legally existing, size limits, 2 years from damage, relocation to meet setbacks	LUPC		
Reconstruction – natural resources, navigation, recreational uses		DEP	
Maximum dimensions	LUPC		
Construction standards (except limitation on non-water dependent uses)		DEP	
Constructions standards – only the limitation on non-water dependent uses	LUPC		
10.27P Accessory Structures		DEP	Site Law permit covers all structures in the development. For individual dwellings in a subdivision, regular LUPC permitting, including 10.27,P would apply.
Chapter 13			Certification standards for Metallic Mineral Mining, which will be regulated under the Metallic Mineral Mining Act, are under development and are not be analyzed here.